not of what was intended to have been written; to give effect to the intention as expressed, the expressed meaning being for the purpose of the interpretation equivalent to the intention. It is not permissible to guess at the intention of the parties and substitute the presumed for the expressed intention" — see *Halsbury*, vol. 11, 3rd edn., p. 382.

In D2 the recital, referring to "the restaurant business at No. 2, Wolferstan Road", coupled the business together with the premises. Clause 6 then stipulated that "the lessee shall not sublet the premises"; hence it raises the question, "if he was not a sub-tenant, having an interest as such in the premises, why prohibit him from doing what was beyond his powers"? Clause 9 imposed on the lessee an obligation to pay the rent of the premises to the landlord, and clause 17 enabled the lessor "to take possession of the premises" for non-payment of rent. This necessarily implied that the lessee was entitled to undisturbed possession of the premises, to the exculsion of the lessor, so long as rent continued to be paid. Exclusive possession, especially in the circumstances of this case, was not merely a hall-mark of a tenancy, but it was also in my opinion clear proof that the person having such possession was legally a tenant and not a licensee — see *Errington* v. *Errington;* [3] *Addiscombe Garden Estates Ltd.* v. *Crabbe.*[4]

In this connection there are some further observations I wish to make. First, the agreement made no reservation whatever for the first respondent having any right to retain any portion of the premises for his own occupation. If he was allowed access to any portion of the premises he did so only by leave and licence of the second respondent, notwithstanding what any witness might have said to the contrary. Secondly, I cannot understand how the business could be severable from the premises. The very fact that the ingenuity of an experienced advocate and solicitor has not proved successful in separating the business from the premises as two distinct entities demonstrates that the lease of the business necessarily included the premises in which the business was carried on. Thirdly, the leased business was no longer the first respondent's own after it was taken over, hence he was not on that account, as he claimed, in occupation of the premises. The employees therein were servants of the second respondent who paid out of his own pocket contributions to the employees provident fund. Fourthly, the power of attorney was a sham because the business to be carried on was, during the period of the lease, not that of the donor who was responsible neither for the losses nor entitled to any profits therefrom. It was merely an instrument to enable the second respondent to obtain renewals of the refreshment room licence in the name of the first respondent. Finally, the few sticks of furniture in the unprepossessing eating shop (of which a list appear on page 72 of the record) were clearly not worth in capital value even half a year's rent. The photographs in evidence speak for themselves. No fine calculation is needed to prove that in collecting $250 per month for nothing — since the monthly rent of the premises was also paid by the second respondent — the first respondent as tenant was making a handsome profit out of the tenancy equal to more than four times the amount of the rent received by the landlord.

I would for the reasons above stated hold that the appellant succeeds on all grounds against the first respondent and, because of the prohibition against subletting, she is entitled to an order for possession against the second respondent as well, since he is not protected by the provisions of section 19 of the Ordinance.

I accordingly allow this appeal and order that the respondents deliver up vacant possession within sixty days of the order. They are to pay up all rents accrued or to accrue until the date of surrender of possession, and double rent after the sixtieth day in the event of their holding on until execution. As to costs, the conduct of the respondents justifies an order that they pay the costs of the action and the appeal.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.; Khoo Eng Chin; Sault, Keith Sellar & Co.*

PUBLIC PROSECUTOR v. ONG KENG SEONG

[A.Cr.J. (Ali J.) July 31, 1966]

[Ipoh — Criminal Revision No. 4 of 1966]

Criminal Law and Procedure — Forfeiture of motor vehicle used as a public service vehicle without a licence — Motor vehicle bought on hire-purchase by registered owner — Whether hirers entitled to be heard — Meaning of "owner" — Road Traffic Ordinance, 1958, ss. 2, 74(1) and 92.

This was an application to revise an order of forfeiture of a motor vehicle which had been found to be used as a public service vehicle with the knowledge of the registered owner. The vehicle was held under a hire-purchase agreement and it was contended on behalf of the finance company that the company as legal owners of the motor vehicle should have been given an opportunity to be heard.

Held: (1) in view of the definition of "owner" as the registered owner of the vehicle in the Road Traffic Ordinance, it was unnecessary for the court to inquire whether there was a hire-purchase agreement in relation to the vehicle;

(2) the fact that the registered owner had knowledge of the car being used for the commission of the offence was sufficient to justify the exercise of the discretionary power of forfeiture.

Case referred to:—

(1) *Kiaw Aik Hang Company Ltd.* v. *Public Prosecutor* [1962] M.L.J. 276.

CRIMINAL REVISION.

Ali J.: On the 10th March, 1966, the magistrate, Taiping convicted one Ong Keng Seong of offences under sections 92(1) and 74(1) of the Road Traffic Ordinance, 1958, for using a vehicle as a public service vehicle without a valid licence and for using the said vehicle without there being in force in relation to its user a third party insurance respectively. On each charge the accused was sentenced to a fine of $500 and was also disqualified from driving or holding a Group D driving licence for a period of 12 months. The trial magistrate also ordered the car to be confiscated being satisfied that its owner was aware of the use to which the car was being put. As far as I am aware Ong Keng Seong has not appealed against the convictions and sentences.

In a letter dated the 22nd March, 1966, an advocate and solicitor named Chin Kit Fung wrote on behalf of Messrs. Heap Huat of No. 203, Main Road, Taiping, applying for the exercise of my revisionary power under section 323 of the Criminal Procedure Code (Cap. 6) to set aside the order of forfeiture on the ground that his clients were the legal owners of the car by virtue of a hire purchase agreement entered into with one Chua Ho Sing, who at the material time was registered in the Road Transport Department as the owner. The main ground of complaint was that before the order of forfeiture was made the legal owners were not given the opportunity of being heard.

From the record of the case, which has been called, it seems clear that the convicted person, Ong Keng Seong, was not the registered owner of the vehicle. The evidence of an official of the Road Transport Department established that the car was registered in the name of one Chua Ho Sing of 832-A, Pokok Assam, Taiping. For reasons which it is not necessary to go into the registered owner, Chua Ho Sing, was not charged and therefore has not been convicted of any offence under section 92. Leave was given to counsel for the applicant to address the court and my attention was drawn to the judgment of Adams J. in *Kiaw Aik Hang Co. Ltd.* v. *Public Prosecutor.*[1] In the course of his judgment the learned appeal judge said:

> "It would also seem to me that magistrates before ordering forfeiture under section 92(4) should enquire as to whether the defendant is in fact the true owner of the vehicle or whether the vehicle is the subject of a hire-purchase agreement. If it transpires that the vehicle is the subject of a hire-purchase agreement, notice should be served on the finance company calling upon them to show cause as to why the vehicle should not be forfeited under section 92(4) and he should hear argument before deciding whether the vehicle should be forfeited, or released".

Relying on these words in the judgment it was submitted that the trial magistrate had erred in making the order of forfeiture under section 92(4) without inquiring as to whether the car was the subject of a hire purchase agreement for the purpose of ascertaining who the true owner was. With respect to the learned appeal judge in the case cited I feel bound to observe that section 92(4) does not expressly require the trial court to make the enquiry as mentioned in the judgment. The first limb of the sub-section empowers the court to make an order either of forfeiture or release of the car seized and the second limb empowers the court to make an order of forfeiture on proof that an offence under section 92(1) has been committed and on proof that the vehicle seized under sub-section (2) was the subject matter of the offence. This power can be exercised notwithstanding that no person may have been convicted of the offence. From the evidence on the record there can be no doubt that an offence under section 92(1) has been committed and that the vehicle in question had been seized and was the subject matter of the offence. Upon such evidence the trial magistrate was entitled to make the order of forfeiture as he did in this case. Quite apart from that the trial magistrate was also satisfied from the evidence that the registered owner — Chua Ho Sing, had knowledge of the fact that the car was being used by Ong Keng Seong for the purpose of committing an offence under section 92(1). With this conclusion of fact I see no reason to disagree. The question which arises is whether the fact that the registered owner had knowledge of the car being used for the commission of an offence was sufficient to justify the exercise of discretionary power of forfeiture under the second limb of sub-section (4). The answer in my judgment must be in the affirmative.

Turning to the judgment of Adams J. in *Kiaw Aik Hang Co. Ltd.* v. *Public Prosecutor, supra,* I find it necessary to express the view that in considering the making of an order of forfeiture under the second limb of sub-section (4) it is not necessary for the trial court to enquire beyond the fact of registration. Section 2 of the Ordinance defines "owner" as follows:—

> "(i) in relation to a motor vehicle registered or deemed to be registered under this Ordinance means the registered owner of such vehicle; and
>
> (ii) in relation to any other motor vehicle means the person in possession of or using or having the use of the motor vehicle;"

In terms of this definition there was no duty on the part of the trial court to enquire whether the vehicle was the subject matter of a hire-purchase agreement. Accordingly, on the view taken and having regard to the circumstances of the case, no valid ground exists for the exercise of my discretionary power under section 323 of

the Criminal Procedure Code. The order of forfeiture is, therefore, confirmed.

Order of forfeiture confirmed.

LEE ENG TEH & ORS. v. TEH THIANG SEONG & ANOR.

[O.C.J. (Gill J.) August 1, 1966]

[K.L. — Civil Suit No. 278 of 1965]

Trust and Trustees — Promise to donate land for building school — Whether promise enforceable — Whether complety or incompletely constituted trust — Charity — Charitable fund — Joining Attorney-General as party — Government Proceedings Ordinance, 1956, s. 9.

The plaintiffs who claimed to be trustees and principal officers of a school in Klang brought an action against the defendants for a declaration that the school was entitled to land in Klang and for an order that the land be transferred to three of the plaintiffs as trustees for the school. The Attorney-General was joined as a plaintiff with his consent. It was alleged that the first defendant had agreed to donate the land to the school. At that time the first defendant was not the registered owner of the land but he was the managing director of the second defendant company who had purchased the land for development. The defendant company as such had not made any promise to donate any part of the land to the school. The school had a building committee of which the first defendant was chairman. This committee had collected funds and they had put up a school on part of the land.

Held: (1) the plaintiffs by themselves could not have maintained the action but as the money collected for the school constituted a charitable fund, a right to sue arose with the joining of the Attorney-General;

(2) the first defendant incurred no contractual liability by making a promise to donate the land for the building of the school and as the promise was a gratuitous one there was no question of any incompletely constituted trust having arisen;

(3) the second defendants having allowed the school to be built on their land, must be deemed to hold such land subject to the equity that they will allow the school building to remain there indefinitely; but it is not the sort of equity on the basis of which in the absence of an unequivocal promise by the second defendant to make a charitable gift, the plaintiffs are entitled to the the declaration they were asking for.

Cases referred to:—

(1) *Strickland* v. *Weldon* (1895), 28 Ch. D. 426.

(2) *Re Hudson* (1885), 54 L.J. Ch. 811.

(3) *Re Cory* (1912), 29 T.L.T. 18.

(4) *Ellison* v. *Ellison* (1802), 6 Ves. 656, 662; 6 R.R. 19.

(5) *Milroy* v. *Lord* (1862), 4 De G.F. & J. 264; 31 L.J. Ch. 798.

(6) *Ex parte Watson* (1888), 21 Q.B.D. 301.

(7) *Tomkinson* v. *South-Eastern Railway Co.* (1887), 35 Ch. D. 675.

(8) *Dillwyn* v. *Llewelyn* (1862), 6 L.T.R. 878.

(9) *Ramsden* v. *Dyson* (1866), L.R. 1 H.L. 129, 170.

(10) *Plimmer* v. *Wellington Corporation* (1884), 9 App. Cas. 699.

(11) *Gregory* v. *Mighell* (1811), 18 Ves. 328.

(12) *Inwards & Ors.* v. *Baker* [1965] 2 W.L.R. 212.

CIVIL SUIT.

Dato' S. P. Seenivasagam (*J. H. Yong* with him) for the plaintiffs.

Miss Chan for the Attorney-General.

C. H. Smith (*R. R. Chelliah* with him) for the defendants.

Cur. Adv. Vult.

Gill J.: This is a suit for a declaration that the Kwang Hwa High School, Klang is entitled to 30 acres (or an undivided 4,800/9,985 shares) of the second defendants' land held under Certificate of Title No. 25889 for Lot 3476 in the Mukim of Bukit Raja, District of Klang, Selangor, for an order that the second defendants do transfer to the first three plaintiffs as trustees of the said school the said undivided share in the said land or any other order which this court may think fit and equitable to grant, and for damages against the defendants.

The action was commenced by the first three plaintiffs as the alleged trustees and principal officers of and on behalf of the Kwang Hwa High School, Klang. The Attorney-General subsequently gave his consent in writing, under the provisions of section 9 of the Government Proceedings Ordinance, 1956 relating to charitable trusts, for the institution of these proceedings and for him to be joined as the fourth plaintiff.

The facts of the case are as follows. In the year 1954 approximately 75 residents of Klang constituted themselves into a committee known as the Kwang Hwa High School Building Committee, with the first defendant as chairman, for the purpose of collecting funds to build a new Chinese school in Klang. They made an appeal for support from the public by issuing a circular letter and a manifesto stressing the need to establish a comprehensive senior and junior middle school by amalgamating the then existing schools in Klang. It was made known to the public that the committee was looking for land for the new school and was even prepared to buy land.

The first defendant offered to sell the land which is the subject matter of the suit. After this offer of sale by the first defendant, one Ng Chee Gian came forward with an offer to donate 30 acres of land at Padang Jawa for the proposed school. The offer by Ng Chee Gian was discussed at the fourth and fifth general meetings of the building committee, but it was not accepted as the land offered was considered unsuitable for the school.

The first defendant then made a further offer, this time to donate the land which he had previously offered to sell. The offer was accepted by the committee and a dinner was held